

United States District Court

for the
Western District of New York



United States of America

v.

Joseph Harvey

Case No. 17-M- 5281

Defendant

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the dates listed below, in the Western District of New York, the defendant, JOSEPH HARVEY, did:

- 1) Between in or about January 2016 and in or about May 2016, using any means and facility of interstate and foreign commerce, knowingly distribute child pornography, as defined in Title 18, United States Code, Section 2256(8), which child pornography had been shipped and transported in and affecting interstate and foreign commerce by any means, including by computer.
- 2) Between in or about January 2016 and in or about May 2016, using any means and facility of interstate and foreign commerce, knowingly receive child pornography, as defined in Title 18, United States Code, Section 2256(8), which child pornography had been shipped and transported in and affecting interstate and foreign commerce by any means, including by computer;
- 3) Between in or about January 2016 and in or about May 2016, knowingly possess material that contained images of child pornography, as defined in Title 18, United States Code, Section 2256(8), that had been mailed, shipped and transported in and affecting interstate and foreign commerce by any means, including by computer, and that were produced using materials that had been mailed, shipped and transported in and affecting interstate and foreign commerce by any means, including by computer

All in violation of Title 18, United States Code, Sections 2252(a)(2)(A); 2252(a)(2)(A); and 2252(a)(5)(B).

This Criminal Complaint is based on these facts:

☒ Continued on the attached sheet.

[Handwritten signature of Justin J. Burnham]
Complainant's signature
JUSTIN J. BURNHAM
SPECIAL AGENT
HOMELAND SECURITY INVESTIGATIONS
[Handwritten notes: A m/f, Gub. N.Y. 2017, A m/f, Oct. 13, 2017, A(m) m/f, Oct. 13, 2017]
[Handwritten signature of Michael J. Roemer]
Judge's signature
MICHAEL J. ROEMER
UNITED STATES MAGISTRATE JUDGE
Printed name and title

Sworn to before me and signed in my presence.

Date: October 16, 2017

City and State: Buffalo, New York

AFFIDAVIT IN SUPPORT OF COMPLAINT

STATE OF NEW YORK)
COUNTY OF ERIE) SS:
CITY OF BUFFALO)

I, Justin J. Burnham, being duly sworn, depose and state:

INTRODUCTION

1. I am a Special Agent with Homeland Security Investigations (HSI) and have been so employed since October 2008. I am currently assigned to the Buffalo Field Office of HSI and am assigned to the Child Exploitation Unit (CEU). As a member of the CEU, I investigate the sexual exploitation of children, including possession, receipt and the production of child pornography as well as coercion and enticement, in violation of Title 18, United States Code, Sections 2252, 2252A, and 2422. I have received specialized training in the area of child pornography, child exploitation, and coercion and enticement, and I have had the opportunity to observe and review numerous examples of child pornography, as defined in Title 18 United States Code, Section 2256.

2. I make this affidavit in support of a criminal complaint charging Joseph HARVEY, hereinafter the defendant, with violations of Title 18, United States Code, Sections 2252A(a)(2)[Distribution of Child Pornography]; 2252A(a)(2)[Receipt of Child Pornography]; and 2252A(a)(5)(B)[Possession of Child Pornography].

3. The information contained in this affidavit is based upon my personal knowledge and observation, my training and experience, conversations with other law enforcement officers and witnesses and a review of documents and records. Because this affidavit is being submitted for the limited purpose of establishing probable cause in support of a criminal complaint charging the defendant with the above offenses, I have not included each and every fact known to me concerning this investigation. I have set forth only the facts necessary to establish probable cause to believe that the defendant knowingly violated Title 18, United States Code, Sections 2252A(a)(2)[Distribution of Child Pornography]; 2252A(a)(2)[Receipt of Child Pornography]; and 2252A(a)(5)(B)[Possession of Child Pornography].

INITIAL INVESTIGATION

4. In January 2015, the Toronto Police Service Child Exploitation Section, began conducting undercover operations utilizing a video conferencing software application used extensively by persons interested in exchanging child pornography and/or sexually abusing children. This application is hereinafter referred to as "Application A." On May 21, 2015 and July 13, 2015, an undercover officer observed an Application A user stream videos of child pornography on Application A. After engaging in a private chat with this user, the user informed the undercover officer that he used the skype name "twainfredonia."

5. A search of a publicly available website revealed that that the IP address associated with the "twainfredonia" account was 208.15.31.194. On July 21, 2015, a federal administrative summons was sent by HSI Special Agent LeRoy Oswald III to the Dunkirk

and Fredonia Telephone Company. On the same date, a response was received that established that the IP address was subscribed to by the defendant with a provided address of 10464 Center Road, Forestville, NY 14062-9666 at the time of the undercover officer's communications with the subject. This account also had the following contact information of telephone number (716) 785-8946 and email address of "twoinfredonia@netsync.net" were also provided in the return.

6. This joint investigation between Toronto Police Department and Homeland Security Investigations, was part of a broader nationwide investigation into Application A. As the nationwide investigation was still ongoing, on the recommendation of the Department of Justice Child Exploitation and Obscenity Section, HSI officers waited to conduct a search warrant of the defendant's home.

NEW YORK STATE POLICE INVESTIGATION

7. On April 4, 2016, in an unrelated investigation, HSI was advised by the New York State Police that they had received a report from the National Center for Missing and Exploited Children that a Verizon Wireless cellular telephone utilizing (716) 785-8946 had uploaded an image of child pornography to a Synchronoss Technologies, Inc server on December 31, 2015 (Synchronoss provides cloud storage solutions for several companies, including Verizon Wireless). Notably, this is the same number that was associated with the subscriber of the IP address used for the "twoinfredonia" Skype username, which was transmitted from the Application A user to the undercover officer on Application A during the course of their communications. Pursuant to a New York State Grand Jury Subpoena

served upon Verizon Wireless by the New York State Police, it was learned that the cellular telephone utilizing (716)785-8946 was subscribed to by Richard Miller of 10464 Center Road, Forestville, NY 14062-9666 at the time that the image was uploaded. Additional investigation would reveal that Richard Miller is the boyfriend of the defendant.

SEARCH WARRANT AT THE DEFENDANT'S RESIDENCE

8. Based on the NCMEC report, on May 13, 2016, SA Oswald applied for and received a federal search warrant from United States Magistrate Court Judge Jeremiah McCarthy authorizing the search of the defendant and Miller's residence located at 10464 Center Road in Forestville, New York for evidence associated with the production, distribution, receipt, and possession of child pornography.

9. On May 16, 2016, the HSI Buffalo Child Exploitation Unit (CEU) executed a federal search warrant at 10464 Center Road in Forestville, New York, 14062 during which several electronic items were seized. During the course of the search warrant execution, Miller and the defendant were encountered inside the residence.

10. Special Agents Nikki Talias and Joseph Gillett conducted a consensual interview of the defendant. The defendant provided the email address of jeh063@gmail.com and stated that he used the cellular telephone bearing telephone number of (716) 785-8946. This is the same phone number subscribed to by Miller and used to upload child pornography to a Synochross Technologies server as described above. The defendant added that he and

Miller had watched child pornography on "Application A", or at least people of "questionable age" having sexual intercourse on "Application A".

FORENSIC EXAM OF ELECTRONIC DEVICES

11. Several electronic items were seized as a result of the search warrant executed at the defendant and Miller's residence at 10464 Center Road in Forestville, New York. During the analysis, which was conducted at the HSI computer forensic laboratory in Buffalo, New York, HSI computer forensic agent Reggie Mathews discovered the following child pornography on a Dell Optiplex GX 620 desktop computer found under a desk in the defendant's art room in the residence. The forensic exam showed that the defendant was the registered owner of this computer. Examples of this child pornography include:

a. "4e21619682e78989996709c4fb3de206.avi" – This video file depicts the penis of an adult male being inserted into the anus of a pre-pubescent minor male child who appears to be under the age of 10 years old. The focus of the recording device is on the insertion of the adult male penis so the upper body of the child is not visible. The child is lying on his back and the adult male is between the legs of the child. The older male who appears to be standing, appears to be naked from the waist down, however he does appear to be wearing a shirt.

b. "21cd3a729ce9978fa01b8aa6bf19f9b6.avi" – This video file depicts the penis of an adult male being inserted into the anus of a pre-pubescent

minor male child who appears to be under the age of 13 years old. Both the minor child and the adult male appear to be completely naked in the video. At points in the video, the minor child is seen lying on his back while the adult male hovers above him inserting his penis into the anus of the minor child.

c. "41e44a1906b75e8689cdd2e9d3a4d777" – This video file appears to be a collection of several different child pornography videos documenting the sexual exploitation of minors. At one point in the video, oral sex is being performed on the penis of an adult male by what is believed to be a prepubescent child around the age of 10 years old.

12. In total, approximately 202 videos and 283 images of child pornography were found on Miller and the defendant's electronic devices.

CELL PHONE MESSAGES

13. On September 13, 2017, your Affiant reviewed the forensic results of an LG CDMA VS990 cellular telephone bearing telephone number (716) 785-8946 belonging to the defendant. During the course of the review of the defendant's cellular telephone, numerous communications in the form of short message service (SMS) and multimedia message service (MMS) between the defendant and Miller's (716-680-2331) telephones were discovered. A

substantial amount of the communications between the defendant and Miller involved comments and images involving the sexual exploitation of children. Some of these communications are referenced below.

14. On January 16, 2016 at approximately 5:23 p.m. (UTC-5), an MMS message was sent from the defendant's telephone to Miller's telephone number (716) 680-2331, herein Miller's telephone. The text read:

Day has been crazy here too. So ready for the day to end.

A still image bearing file name 18749.jpg accompanied the message which can be described as an adolescent boy with blonde hair lying with the front of his body on a blue blanket which was on a bed. The picture was taken behind the young boy and the focus of the camera is between the legs of the boy and his buttocks. The boy's genitals can be seen in the photograph. The phrase "BOYSTORM" is seen in the lower left hand corner of the photograph. The word "boypost" is seen in the upper right hand portion of the image.

15. The following SMS messages relate to the distribution of the image described above (18749.jpg).

Date/Time	From	To	Content
1/16/2016 at 5:24:54 p.m. (UTC-5)	Miller	Defendant	Mmmm....nice boy. I just got home.
1/16/2016 at 6:03:12 p.m. (UTC-5)	Defendant	Miller	Did you grab smokes pedo?

16. On January 29, 2016, HARVEY and Miller engaged in the following SMS conversation:

Date/Time	From:	To:	Content:
1/29/2016 at 5:09:32 p.m. (UTC-5)	Defendant	Miller	Mmm young boy on crutches, I think I can catch him.
1/29/2016 at 5:10:34 p.m. (UTC-5)	Miller	Defendant	Mmmmmmmmmmm.I had the 5yo in for a haircut today
1/29/2016 at 5:10:46 p.m. (UTC-5)	Miller	Defendant	Cutest 5yo
1/29/2016 at 5:12:03 p.m. (UTC-5)	Defendant	Miller	Mmmm. Pedophile
1/29/2016 at 5:13:19 p.m. (UTC-5)	Miller	Defendant	Love it pedophile

17. On February 2, 2016, the defendant and Miller engaged in the following SMS conversation:

1/29/2016 at 6:46:05 p.m. (UTC-5)	Miller	Defendant	She is. You in the mood to tweak and watch some new pedo porn when you get home?
2/2/2016 at 6:46:37 (UTC-5)	Defendant	Miller	Sure pedo
2/2/2016 at 6:47:23 p.m. (UTC-5)	Miller	Defendant	Mmmm

18. On February 14, 2016, Defendant and Miller engaged in the following SMS conversation:

2/14/2016 at 1:07:00 p.m. (UTC-5)	Miller	Defendant	Ped daddy
2/14/2016 at 1:08:09 p.m. (UTC-5)	Defendant	Miller	Fellow perv daddy. Wish I had a little boy waiting when you got home
2/14/2016 at 1:09:07 p.m. (UTC-5)	Miller	Defendant	Would love that!!

2/14/2016 at 1:10:02 p.m. (UTC-5)	Defendant	Miller	Come and find my dick burried (sic) in his hole.
2/14/2016 at 1:10:52 p.m. (UTC-5)	Miller	Defendant	Bloated daddy dick on his hairless boy hole. Love it ped dog
2/14/2016 at 1:11:51 p.m. (UTC-5)	Defendant	Miller	Mmm. Have you do a line, get undressed and slip your dick in his home whole I watch (sic)
2/14/2016 at 1:12:48 p.m. (UTC-5)	Miller	Defendant	My cock is twitching for iy (sic)
2/14/2106 at 1:12:51 p.m. (UTC-5)	Miller	Defendant	it
2/14/2016 at 1:13:28 p.m. (UTC-5)	Defendant	Miller	Hmmmm love your ped cock
2/14/2016 at 1:14:36 p.m. (UTC	Miller	Defendant	Love yours ped perv
2/14/2016 at 1:17:31 p.m. (UTC-5)	Miller	Defendant	Love to come home and find you sitting on the barstool sitting in front of the computer and a little dude chewing on that
2/14/2016 at 1:18:47 p.m. (UTC-5)	Defendant	Miller	Mmmm. Tight mouth suck my bloated dick

19. On February 26, 2016 at approximately 5:35 p.m. (UTC-5), an MMS message was sent from Miller's cellular telephone to Defendant's telephone. The message contained the file IMAG0455.jpg, an image file depicted a white, toddler boy laying on a black leather couch and holding a multi-colored blanket. The toddler is wearing an orange, white, and green plaid shirt and is not wearing any pants. The buttocks of the toddler is exposed to the camera. The following SMS conversation is then seen between Miller and Defendant's cellular telephones.

Date/Time:	From:	To:	Content:
2/26/16 at 5:39:18 p.m. UTC-5	Defendant	Miller	Hmmmm bend over and start licking that.
2/26/16 at 5:40:04 p.m. UTC-5	Miller	Defendant	Fuck yeah pedo

2/26/16 at 5:45:16 p.m. UTC-5	Defendant	Miller	Sit next to him and finger his sleeping hole
2/26/16 at 5:52:37 p.m. UTC-5	Miller	Defendant	I love that. Open him up for daddy's dick

20. On March 7, 2016 at approximately 1:28 p.m. (UTC-5), an MMS message was sent from Defendant's telephone to Miller's telephone. The text read:

Lucky teen boy!

The still image bearing file name 6a684e2b-d8eb-4ed6-b5cc-2b8614da4857.jpg depicted two naked, pre-pubescent young white boys performing oral sex on a naked, adolescent boy. The adolescent boy is seen sitting on what appears to be a couch with his arms up and hands behind his head. The two younger boys are seen with their mouths and tongue on the erect penis of the adolescent boy.

21. The following SMS messages relate to the distribution of the image described above (6a684e2b-d8eb-4ed6-b5cc-2b8614da4857.jpg).

Date/Time:	From:	To:	Content:
3/7/2016 at 1:40:53 PM(UTC-5)	Miller	Defendant	Fuck! That's some hot shit
3/7/2016 at 1:41:35 PM(UTC-5)	Defendant	Miller	👀

22. On March 7, 2016 at approximately 4:52 p.m. (UTC-5), an MMS message was sent from the defendant's telephone to Miller's telephone. No text message accompanied this MMS message. The still image attached to this MMS message bearing file name 9b49f6d8-d19c-4667-a336-7d953e5ad41e.jpg depicted a prepubescent young white boy lying down on a red blanket with his legs apart. The penis and testicles of the young male are visible to the viewer. Behind the young boy is an adult male whose penis is seen entering the anus of the young boy.

23. The following SMS messages relate to the distribution of the image described above (9b49f6d8-d19c-4667-a336-7d953e5ad41e.jpg).

Date/Time:	From:	To:	Content:
3/7/2016 at 4:53:46 PM(UTC-5)	Miller	Defendant	He loves daddy's dick
3/7/2016 at 4:54:13 PM(UTC-5)	Defendant	Miller	Mmmm

24. On April 27, 2016, the defendant and Miller engaged in the following SMS conversation:

4/27/2016 at 5:11:04 p.m. (UTC-4)	Miller	Defendant	Coke whore
4/27/2016 at 5:11:15 p.m. (UTC-4)	Miller	Defendant	Pedophile
4/27/2016 at 5:11:21 p.m. (UTC-4)	Miller	Defendant	Rapist
4/27/2016 at 5:11:39 p.m. (UTC-4)	Defendant	Miller	Would love to rape.
4/27/2016 at 5:12:23 p.m. (UTC-4)	Defendant	Miller	Have daddy watch and tell me what he wants me to do to that little boy

25. On May 6, 2016, at approximately 11:46 a.m. (UTC-4), an MMS message with a still photograph was sent from the defendant's telephone to Miller's telephone. This file, 030001b1.jpg, depicts a young pre-pubescent white boy wearing an orange shirt between the legs of an adult male. The adult male, wearing what appears to be jean shorts, is lying down with his erect penis exposed. The young boy's open mouth is seen just above the adult male's penis and a hand, believed to be the young boy's, is seen around the adult male's penis.

26. The following SMS messages relate to the distribution of the image described above (030001b1.jpg).

Date/Time:	From:	To:	Content
5/6/2016 at 11:47:44 a.m. (UTC-4)	Miller	Defendant	Mmmmm...thanks lover. Yours too. Love you.

27. On May 10, 2016, at approximately 2:57 p.m. (UTC-4), an MMS was sent from the defendant's cellular telephone to Miller's cellular telephone which read:

Hey babe. Day is good. How is yours going?

Attached to this message was an image bearing file name 030001ad.jpg of a young, white, pre-pubescent male wearing no shirt. It is unclear if the child is wearing any pants. The child is seen between the legs of an adult male. The adult male's erect penis is seen just below the open mouth of the young boy. The young boy's hands are touching the base of the adult male's penis.

28. The following SMS message relates to the distribution of the image described above (030001ad.jpg).

Date/Time:	From:	To:	Content:
5/10/2016 at 3:00:06 p.m. (UTC-4)	Miller	Defendant	Mmmmm. I need one of those. Day is good.

29. On May 10, 2016, at approximately 3:16 p.m. (UTC-4), an MMS was sent from Miller's cellular telephone to the defendant's cellular telephone. An image bearing file name czAH5dH1750.jpg was attached to the MMS, but no written message was seen. The image depicts the pubic area of a prepubescent white boy. The entire frame of the picture is focused on the erect penis of the boy.

30. The following SMS messages relate to the distribution of the image described above (czAH5dH1750.jpg).

Date/Time:	From:	To:	Content:
5/10/2016 at 3:19:49 p.m. (UTC-4)	Defendant	Miller	Yummmm

JAIL CALLS BETWEEN MILLER AND THE DEFENDANT

31. Since Miller has been detained at the Allegany County Jail pending the resolution of his criminal charges, he has engaged in telephone calls with multiple individuals. Some of Miller's telephone calls, one of which is referenced below, have been reviewed by HSI SA Justin Burnham. On June 12, 2017 Miller was in communication with the defendant via telephone. At approximately 20 minutes and 30 seconds in the recording, the following statements, among other statements are heard.

SPEAKER	CONTENT
Miller	Like I said, we're lucky you're not in here with me, you know?
Defendant	Yeah, I know.
Miller	No more "bing", do you hear me?

Defendant	What's that?
Miller	You. No more "Bing". No more pictures. No more nothing.
Defendant	Nope, nope, nope, nope, nope.
Miller	Promise?
Defendant	Promise. Absolutely. Already took care of that so.
Miller	I don't need you in trouble.
Defendant	Oh. We're fine here now so.
Miller	What's that?
Defendant	I said it's all fine here now so.
Miller	Good. Good. Good.

CONCLUSION

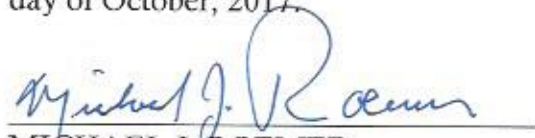
32. Based upon the foregoing, I respectfully submit that I have probable cause to believe that **Joseph HARVEY**, has violated Title 18, United States Code, Section 2252A(a)(2) [Distribution of Child Pornography]; 2252A(a)(2) [Receipt of Child Pornography]; and 2252A(a)(5) [Possession of Child Pornography].



Justin J. Burnham, Special Agent
Homeland Security Investigations

Sworn to before me this 16th

day of October, 2017.



MICHAEL J. ROEMER
United States Magistrate Judge